

# DEFICIT REDUCTION ACT (DRA) 2005

# DRA TOPICS

- What is the DRA?
- National Partnership
- Medi-Cal Update
- Elder Law Attorney Perspective
- Estate Recovery Regulations

# WHAT IS THE DRA?

- The DRA is federal legislation that was put into law 2-8-06.
- Bill includes Katrina relief money along with various other budget items.

# WHAT IS THE DRA?

- This bill is relevant to us for two reasons:
  - Included language allowing the expansion of the Partnership program to all States not currently operating a program. (CA, Indiana, Connecticut, and NY can continue to operate as is)
  - Made changes to Medi-Cal eligibility rules

# KEY PROVISIONS OF NATIONAL PARTNERSHIP

- Uniformity: Partnership policies are to be the same as all Tax-Qualified policies in any given state
- Effective date: States can opt into the program as soon as they can get a Medicaid Plan Amendment filed and approved
- Existing policyholders: Does not apply to existing policyholders, but exchanges may be allowed by participating states

# KEY PROVISIONS OF NATIONAL PARTNERSHIP

- Reciprocity: The Department of Health and Human Services will establish standards within a year to determine reciprocity requirements but states have the ability to opt in or out
- The establishment of a national clearinghouse for LTC information and education.

# KEY PROVISIONS OF NATIONAL PARTNERSHIP

- Inflation protection will be required as follows:
  - Ages 0 to 60: Compound inflation protection required
  - Ages 61 to 75: Some form of inflation protection is required (simple permitted)
  - Age 75+: No requirements on inflation

# DRA: MEDI-CAL CHANGES

- Look Back Period
- Look Back Penalty
- Annuities
- Home Equity
- Accumulating Transfers
- Life Estates



# LOOK-BACK PERIOD

- Current law
  - 36 months (30 in CA) for assets and 60 months if in a trust (30 in CA)
- New law
  - 60 months for all transfers
  - Effective upon enactment

# LB COMPARISON

- Mr. Smith Transfers \$500,000 37 months prior to applying for Medi-Cal.
  - Current law:
    - No penalty period
  - New law:
    - Period of ineligibility would be incurred.
    - Why?

# LOOK BACK PENALTY - CURRENT

- Penalty period starts from the date of the transfer.
- The penalty period may almost be completed by the time they apply for Medi-Cal.

# LOOK BACK PENALTY - NEW

- Start date for serving penalty period is the later of:
  - The first date of the month on which the ineligible transfer occurred; or
  - The date the individual is eligible for Medi-Cal

# PENALTY COMPARISON

- Mr. Smith transferred \$500,000 to a son 25 months prior to applying for Medi-Cal
  - Current law
    - Serves penalty from the 25<sup>th</sup> to the 30 month, inclusive. Length limited to a maximum 30 months.

# PENALTY COMPARISON - NEW

- Starts serving penalty on the date he applies for Medi-Cal.
- With OBRA 93 in place (no limit on length of penalty), would be ineligible for actual number of months. ( $\$500,000/\$5,031=99$  months)
- To be determined if removal of penalty cap (OBRA 93) is enacted with the DRA provisions.

# ANNUITIES - CURRENT

- Provides that a trust includes annuities only to the extent that the HHS secretary defines them.
- Balloon payment and other similarly structured annuities allowed.

# ANNUITIES - NEW

- Requires applicants to disclose interest they or community spouse have in an annuity, regardless if its irrevocable or is treated as an asset
- Includes in the definition of assets subject to transfer penalties an annuity purchased on the behalf of annuitant who has applied for Medi-Cal



# ANNUITIES - NEW

- Allowable annuities include those irrevocable and non-assignable, actuarially sound, and provide for equal monthly payment with no deferrals or balloon payments
- The state must be named as the remainder beneficiary

# ANNUITIES - NEW

- States can require the issuer to notify them when changes are made to the withdrawal amounts (P or I)
- If annuity is purchased and the state is not named the beneficiary, will be treated as disposal of assets for less than fair market value and subject to penalty

# HOME EQUITY – CURRENT

- The principal residence remains exempt as long as you live in the property or if in a facility, you have the intent to return there.
- No limit on the amount of equity

# HOME EQUITY - NEW

- Individuals with more than \$500,000 (states can increase the amount to \$750,000) in home equity are not eligible unless home equity reduced.
- Can use a reverse mortgage or equity line to reduce homes equity.
- Dollar amount will be increased, starting in 2011, based on CPI.
- Applies as of January 1, 2006.

# ACCUMULATING TRANSFERS - CURRENT

- Multiple transfer completed during same month are treated as separate transfers as long as each transfer is less than Medi-Cal Average Private Pay Rate (\$5,031 for 2006)

# ACCUMULATING TRANSFERS - NEW

- Allows states to accumulate transfers from more than one month on or after the look back date when determining if a penalty period applies

# LIFE ESTATES - CURRENT

- There is no direction on whether a life estate is treated as a countable or non countable assets

# LIFE ESTATE - NEW

- Redefines the term assets, with respect to asset transfer rules to include the life estate interest in another persons home, unless they reside their for at least one year after the date of purchase.